

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

KELLY PARSLEY,)
Plaintiff,) Civil Action No.
vs.)
POINT PARK UNIVERSITY,)
Defendant.) **JURY TRIAL DEMANDED**

COMPLAINT

AND NOW, comes Plaintiff Kelly Parsley by and through his counsel, Robert P. Walter, Esquire, Zachary G. Evans, Esquire, and the law firm of Poerio & Walter, Inc. and files this Complaint against Point Park University, stating in support thereof as follows:

I. Nature of the Action

1. This is an action for equitable relief, as well as monetary damages, to redress Defendant's unlawful sex discrimination and retaliation against Plaintiff in violation of Title VII of the Civil Rights Act of 1964.

II. Jurisdiction and Venue

2. This Court has jurisdiction under 28 U.S.C. § 1331, pursuant to Title VII or the Civil Rights Act of 1964. This action involves federal questions regarding the violation of Plaintiff's rights protected by Title VII.

3. The events or omissions giving rise to the claims occurred in Allegheny County, Pennsylvania, and therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania, and such Court situated in Pittsburgh is the proper venue for this action.

III. Parties

4. Plaintiff Kelly Parsley (“Parsley”) is an adult individual who currently resides in Kansas. However, at all times relevant hereto, Parsley resided in Allegheny County, Pennsylvania, and was employed by Defendant.

5. Defendant Point Park University (“Point Park”) is a non-profit corporation with an address of 201 Wood Street, Pittsburgh, PA 15222.

IV. Facts

6. Parsley is an openly homosexual male.

7. Within the statute of limitations, Parsley filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”)

8. Parsley received a right to sue letter from the EEOC.

9. From 2000 to 2006, Parsley was the first cross country head coach in Goldey Beacom College in Wilmington, Delaware, coaching both the men’s and women’s program.

10. During this tenure, Parsley earned Coach of the Year honors for the Central Atlantic Collegiate Conference twice, his team was conference champions twice, runner up twice, and finished third the remaining season.

11. From 2006 through 2013, Parsley coached at both the collegiate and high school levels, where his athletes consistently set personal and school records.

12. In 2013, Parsley was hired to start a track and field program in the National Association of Intercollegiate Athletics at Lindenwood-Belleville in St. Louis, Missouri.

13. Parsley was hired by Point Park in 2014 as the first head coach in Point Park’s history to develop a men’s and women’s track and field program.

14. At this time, Dan Swalga was Point Park’s Athletic Director.

15. Parlsey was then assigned to coach the men's and women's cross-country team, in addition to the track and field teams, in 2015.

16. In 2019, Parsley was named River States Conference Coach of the Year for the tenth time when he was named Coach of the Year for both the men's and women's indoor track and field teams, in addition to leading both teams to championships.

17. During his tenure at Point Park, Parsley lead teams won nine total conference championships.

18. In the Spring of 2018, Parsley lodged an internal complaint pursuant to Title IX because he was being discriminated against because of his sex and sexual orientation.

19. From the time he was hired, Parsley was treated differently and held to a different standard than the other heterosexual male coaches at Point Park.

20. The heterosexual male coaches at Point Park routinely mocked Parsley for his coaching methods.

21. Despite heterosexual coaches in the athletic department exhibiting similar conduct when interacting with their respective teams, Parsley was reprimanded for "yelling" at his team during practices and at meets by Dan Swalga and other Point Park officials.

22. During his tenure, Parsley also observed and was made aware of other heterosexual male coaches harassing graduate students, inappropriate touching, and making inappropriate comments to student athletes.

23. Parsley brought this conduct to the attention of the Human Resources Department at Point Park and higher-ups in the Athletic Department; however no disciplinary action was taken.

24. Routinely Parsley would not be invited to Department events, such as holiday and birthday parties.

25. The internal Title IX investigation was conducted by Elizabeth Rosemeyer, then employed by Point Park, and assisted by Marla Presley, Esq., of the law firm Jackson Lewis.

26. The Title IX investigation's outcome was that Parsley had been treated differently than other male coaches, but the investigators could not determine if the dissimilar treatment was because he was a homosexual male as homosexual women allegedly did not experience similar harassment and discrimination.

27. Parsley disagreed with the internal Title IX investigation's findings.

28. After the Title IX investigation, Dan Swalga and Elizabeth Rosemeyer ended their employment with Point Park.

29. Dan Swalga was then replaced by John Ashelou as the Athletic Director at Point Park.

30. While Parsley was employed by Point Park, Dan Swalga, in his capacity as Athletic Director, and then John Ashelou, in his capacity as Athletic director, created the hostile environment targeting Parsley for his sex and sexual orientation.

31. After the Title IX investigation, a freshman student and the Dean of Student Affairs, Keith Paylo, orchestrated a scheme for interfering with, and eventually terminating, Parsley's coaching career.

32. One of Parsley's student athletes informed Parsley of the scheme and that she was pressured to "say bad things" about Parsley during the investigation of the manufactured and false complaints.

33. The freshman student and Dean Paylo encouraged Parsley's student athletes to lodge false complaints against Parsley in order to create a false pretext to terminate Parsley.

34. These manufactured complaints were sent directly to Human Resources and did not go through the complaint process as outlined in the Student Handbook¹.

35. After receiving multiple manufactured false complaints, Parsley was unlawfully terminated the same week wherein he earned his tenth Coach of the Year honor.

COUNT I

Sex Discrimination in Violation of Title VII

36. Paragraphs 1 through 35 are hereby incorporated by reference as if the same were set forth herein at length.

37. In *U.S. Equal Employment Opportunity Commission v. Scott Medical Health Center, P.C.*, 217 F. Supp.3d 834 (W.D. Pa. 2016), this Court held that the “because of sex” provision in Title VII included discrimination because of sexual orientation.

38. At all times relevant hereto, Parsley was a statutory employee under Title VII of the Civil Rights Act.

39. Point Park is a statutory employer under Title VII of the Civil Rights Act.

40. Parsley was qualified to perform the duties of his position, for which sex or sexual orientation is not a bona-fide occupational qualification, because: (1) Parsley has the requisite professional experience; (2) Parsley has been coaching and mentoring student athletes for almost two decades; (3) Parsley had established programs at other higher education institutions; (4) Parsley led teams at Point Park and other higher education institutions won league

¹ https://www.pointpark.edu/studentlife/Point-Park-Student-Handbook-2018-19-rev-2018_08-24-1.pdf at page 37 - Student Complaints are to go through Student Affairs.

championships and were otherwise successful; and, (5) Parsley was recognized as Coach of the Year for his coaching at Point Park ten times during his five year tenure.

41. Parsley suffered adverse employment actions in the following ways: (1) Parsley was treated differently than his heterosexual male colleagues and singled out by Department directors and higher-ups because of Parsley's sex and sexual orientation; (2) Parsley was the victim of an orchestrated scheme of recruiting his student athletes to file false complaints because of his sex and sexual orientation; (3) Parsley's Title IX complaint was not sufficiently investigated by Point Park; and, (4) Parsley's employment was wrongfully and unlawfully terminated for his sex and sexual orientation under the false pretext put forth in the orchestrated false complaints.

42. Point Park's adverse employment actions grant an inference of sex discrimination because: (1) Parsley is an openly homosexual male; (2) Point Park officials were aware of Parsley's sexual orientation; (3) Parsley was held to a different standard than heterosexual male coaches; (4) Parsley was targeted in an orchestrated scheme of false complaints because of his sex and sexual orientation; (5) heterosexual male coaches were not disciplined for inappropriate conduct brought to the Department's attention; and, (6) Parsley led his teams to championships and won numerous accolades during his tenure at Point Park.

COUNT II

Retaliation in Violation of the Title VII

43. Paragraphs 1 through 42 are incorporated by reference as if the same were set forth herein at length.

44. When Parsley filed his Title IX complaint, he engaged in a protected activity.

45. During the investigation of his Title IX complaint, the orchestrated scheme of untrue complaints was hatched in unlawful retaliation to his protected activity.

46. This scheme was developed with the intention of interfering with and eventually terminating Parsley's employment at Point Park.

47. Parsley's employment was terminated the same week where he won his tenth Coach of the Year honor.

48. The temporal proximity of the orchestrated scheme of false complaints grants an inference of discrimination and retaliation.

49. The temporal proximity of the termination to the protected activity grants an inference of discrimination and retaliation.

COUNT III

Hostile Work Environment in Violation of Title VII

50. Paragraphs 1 through 49 are incorporated by reference as if the same were set forth herein at length.

51. Parsley was subjected to harassing conduct by Dan Swalga, John Ashelou, Keith Paylo, and other members of the Point Park administration and faculty.

52. The harassing conduct that Parsley was subjected to was severe and pervasive.

53. Point Park representatives and "higher-ups" orchestrated the harassing conduct, including, but not limited to, Parsley being referred to as a "bitch" by heterosexual male coaches, being observed and unfairly critiqued at practices when the other heterosexual male coaches were not, and not having his Title IX complaint taken seriously and adequately investigated.

54. Point Park knew the harassing conduct was occurring.

55. Point Park failed to take prompt action to correct this harassing conduct.

56. Point Park and its agents participated in harassing conduct such as: (1) not adequately investigating his Title IX complaint; (2) routinely overlooking and dismissing Parsley as a member of the Athletic Department; and (3) orchestrating a scheme of false complaints to lay a false pretext for Parsley's termination.

57. The harassing conduct to which Parsley was subjected resulted in a hostile work environment in violation of Title VII of the Civil Rights Act of 1964.

Request for Relief

WHEREFORE, Plaintiff Kelly Parsley respectfully request for this Court to grant the following relief:

- a. Award Plaintiff back pay, if appropriate;
- b. Award Plaintiff front pay, if appropriate;
- c. Award Plaintiff punitive damages, pre and post judgment interest, costs of suit and attorney and expert witness fees as allowed by law;
- d. Award Plaintiff compensatory damages for lost wages, benefits, interest, costs of relocation, and other remuneration, and for embarrassment, humiliation, emotional distress, and damage to the reputation as well as punitive damages;
- e. Such equitable relief as may be appropriate under the circumstances; and
- f. Award such further relief as this Court deems necessary and proper.

Respectfully submitted,

POERIO & WALTER, INC.

By: /s/ Robert P. Walter
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